

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-638-C - ORDER NO. 90-530 ✓
MAY 21, 1990

IN RE:	Application of Southern Bell Telephone)	ORDER DENYING
	& Telegraph Company for Approval of)	IN PART AND
	Revisions to its General Subscribers)	GRANTING IN PART
	Service Tariff (Tariff No. 89-171,)	PETITION FOR
	Caller I.D.))	REHEARING AND
)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and Reconsideration filed April 30, 1990, in the instant Docket on behalf of Steven W. Hamm, Consumer Advocate for the State of South Carolina (the Consumer Advocate). The Consumer Advocate petitioned the Commission for rehearing or reconsideration of Order No. 90-428 issued in the instant Docket, which approved Southern Bell's tariff filing with certain modifications for Caller I.D. service.

The Consumer Advocate alleges that the Commission committed error in Order No. 90-428 by refusing to rule on the issue of whether the Caller I.D. tariff, as filed by Southern Bell, violates S.C. Code Ann. §17-29-10, et seq. (Cum. Supp. 1989) and would

constitute a "illegal trap and trace device." The Consumer Advocate alleges that the Commission stated in Order No. 90-211 it would address the issue if raised during the hearing before the Commission. The Commission's refusal to rule on the legality of Caller I.D. amounts to error, according to the Consumer Advocate. This error asserted by the Consumer Advocate is that Order No. 90-428 lacks sufficient findings of fact and conclusions of law in violation of S.C. Code Ann. §1-23-350 (1976), as amended. The Consumer Advocate contends that Caller I.D. cannot be approved until its legality under §17-29-10 is determined. Related to the aforementioned error, the Consumer Advocate also states that the Commission, by approving Caller I.D., approved a service which is in violation of S.C. Code Ann. §17-29-10, et seq (Cum. Supp. 1989), and therefore is in violation of S.C. Code Ann., §1-23-380 (1976), as amended. The Consumer Advocate alleges that the Commission has a duty to uphold the laws of South Carolina in approving any request from a regulated utility and that the Commission has neglected its duty by approving Caller I.D.

In response to the Consumer Advocate's allegations of error concerning the violation of §17-29-10, the Commission, in Order No. 90-428, found that "it is up to the appropriate prosecutors of this State to interpret §17-29-10, et. seq., and the applicability of

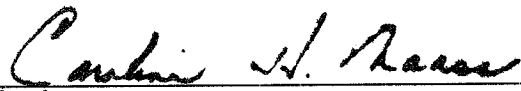
those sections to this proposed service of Southern Bell and take the appropriate action." While the Commission admittedly did not rule on the legality of Caller I.D., it is not the appropriate body to do so. When the allegation of error relates to an entirely foreign subject to the Commission's jurisdiction involving an independent branch of substantive law, the Commission cannot constitute itself a judicial tribunal with the power to rule on a criminal statute. Beard-Laney, Inc., et al. v. Darby, et al., 213 S.C. 380, 49 S.E.2d 564 (1948). The statute in question, §17-29-10 (et. seq.), is a criminal statute with criminal penalties. This statute is entirely outside of the jurisdiction of this Commission, and the Commission cannot legally rule on a potential criminal matter. Therefore, the Commission cannot rule on the applicability of §17-29-10 et. seq. However, the Consumer Advocate is invited to test the legality of Caller I.D. in the appropriate judicial forum. Should the forum of competent jurisdiction issue a final order finding that the service violates the criminal laws of this State, then the Commission will take the appropriate action regarding the service at that time.

The Consumer Advocate also alleges that the rates charged for Caller I.D. service for residential and business customers are not based upon the substantial evidence of record. As to this issue of support for the rates proposed by Southern Bell for its Caller I.D.

service, the Commission grants rehearing for the limited purpose of considering the rates charged for residential and business customers with Caller I.D. The parties will be notified when the rehearing will be scheduled.

IT IS SO ORDERED:

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director
(SEAL)